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No.

IN THE

Supreme Court of the United States

BRENDA HAMILTON

v.

WORKERS' COMPENSATION APPEALS BOARD, ET AL

On Petition For Writ Of Certiorari
To The Court of Appeals of California,
Second Appellate District

PETITION FOR WRIT OF CERTIORARI

Brenda Hamilton
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70pp

QUESTIONS PRESENTED

1. Was petitioner given due process at the June 28, 1999, trial regarding psyche/orthopedic testimony?

2. For the sake of this case and future cases, should colored videotape with audio be mandatory at all workers' compensation's comprehensive medical-legal evaluations, to protect petitioner's credibility, benefits and entire claim(s) thus preventing the judge from entertaining and granting a motion to draw adverse inference?

3. Did the worker's compensation judge err by failure to mention at the June 28, 1999, trial and in his Order, Opinion and Report that petitioner needs back surgery, is wheelchair-dependent with three herniated discs in lower back, supported by Dr. Moskowitz's February 10, 1987 and August 12, 1987 reports?

4. Did the worker's compensation judge err by rendering all other issues moot, when there is no other court to collect work related funds?

5. Did the California State Supreme Court and the lower courts err by upholding W.C.A.B.'s decision to deny petitioner's two witness' statements as evidence at trial, to support petitioner's claims at the time of injuries and allow defense's eight witness' statements unsigned, into evidence which were not signed under penalty of perjury?

6. With petitioner's medical records of Dr. Moskowitz, supporting claims that low back injury had been reported to her employer at time of injury number one, why was the on the job injury questionable?

7. In voluminous cases, should full weight of decision be based only on the merits of defense's IME doctor evaluation reports stating 100% denial of industrial injury when petitioner's IME orthopedic doctor evaluation report states that there is industrial injury caused by Southern California Gas Company?

8. Was petitioner misrepresented by her IME psyche doctor, Joel Frank. by labeling her as uncooperative?

9. Did the worker's compensation judge err in issuing a Finding of Fact blocking all chances of appeal rather than leaving the disputed issues for resolution at trial?

10. Did the California State Supreme Court and lower courts err by upholding a Workers' Compensation Appeals Board's decision after the 30 day submission rule by not allowing a new trial under a writ of mandamus?

11. Did the workers' compensation judge misapply *Place v. W.C.A.B.* to this case?

PARTIES

All parties do not appear in the caption of the case on the cover page. A list of parties to the proceedings in the court whose judgment is the subject of this petition is as follows:

Southern California Gas Company, Permissibly Self-Insured

Alexis Risk Management

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PETITION FOR WRIT OF CERTIORARI

Brenda Hamilton respectfully petitions for a writ of certiorari to reverse the decision of Workers' Compensation Appeals Board in this case.

OPINIONS BELOW

The opinion of the highest state court to review the merits appears at A-33 and A-34 to the petition and is unpublished.

The opinion of the Court of Appeal-Second Appellate District, Division Five appears at A-31 and A-32 to the petition and is unpublished.

The opinion of the Workers' Compensation Appeals Board appears at A-1 through A-6 to the petition and is unpublished.

JURISDICTION

The date on which the highest state court decided my case was May 24, 2000. A copy of that decision appears at A-34.

STATUTORY PROVISIONS INVOLVED

Labor Code Section 4052: Presence of employee's physician.

"The employee may employ at his own expense a physician, to be present at any examination required by his employer."

Labor Code Section 4055. Physician's report.

"Any physician who makes or is present at any such examination may be required to report or testify as to the results thereof."

Labor Code Section 5309. Appeals Board power over worker's compensation judge.

"The appeals board may, in accordance with rules of practice and procedure which it shall adopt and upon the agreement of the parties, on the application of either, or of its own motion, and with or without notice, direct and order a worker's compensation judge:

(a) To try the issues in any proceeding before it, whether of fact or of law, and make and file a finding, order, decision, or award based thereon."

Labor Code Section 5313. Decision of Appeals Board or workers' compensation judge.

"The appeal board or the workers' compensation judge shall within 30 days after the case is submitted, make and file findings upon all the facts involved in the controversy and award, order, or decision stating the determination as to the rights of the parties. Together with the findings, decisions, order or award there shall be served upon all the parties to the proceedings a summary of the evidence received and relied upon and the reasons or grounds upon which the determination was made."

STATEMENT OF THE CASE

Brenda Hamilton, petitioner in propria persona, was hired as an Office Records Clerk-G at interview by Laura Mahoney, Supervisor of Collections at Southern California Gas Company. However, on February 8, 1982, Mrs. Mahoney started employee to work as a Typist Clerk-S (lower position). At the time, as a new hire, employee was unaware her position as G-grade Clerk was given to temporary employee, Bernice Woods, who subsequently was one of the eight witnesses, who gave false testimony against petitioner. Petitioner bided out from the Collections Department to the Distribution Department. Shortly thereafter, Bernice Woods followed her to the distribution section.

Petitioner had 100% attendance record the first year and thereafter with good appraisals, received two promotions from a S-Grade to a G-Grade and from a G-grade to a U-grade. Petitioner was known to work well with supervisors and peers. Petitioner's job performance on appraisals were satisfactory until employee took a telephone message for Planning Supervisor, Harold Richard Speck, from his wife. Petitioner was very discreet. She folded the telephone message memo and placed it on his desk. The unflattering message suggested allegations of H. Richard Speck's infidelity. From that point on employee's work load increased, supervisors from other districts began to cause problems for her and some of the employees too. H. Richard Speck would

mimic behind petitioner's back; other employees would tell her. The work load was so heavy that petitioner would ask for help only to be told she was working too slow. On June 9, 1986, petitioner wrote a letter to the Superintendent, Bill Ware, asking for help. It was common knowledge that she worked the largest district, Huntington Park's work orders at the Compton base, not the Compton work orders, as stated in the minutes of hearing dated 6-28-99 by the WCJ. Compton's work orders were very light. Petitioner's appraisals began to be marked unsatisfactory. To be factual, petitioner's last appraisal reflected the performance of Bernice Woods, which was poor and Bernice was given the credit petitioner deserved. Petitioner continued to work under these stressful conditions until she could no longer walk due to severe lumbarsacral sprain with pain radiating down right leg. She went immediately from work to the doctor, which occurred on 6-12-86.

Petitioner sustained four injuries filed by law firm Cantrell and Green, Pekich and Zaks, petitioner is now in propria persona. See injuries listed below:

Injury #1, Claim No. LBO 167122: On, June 12, 1986, Brenda Hamilton, petitioner while employed by the employer as a Record Control Clerk "U" (Utility Grade). On that day, Brenda Hamilton sustained the following-described injury: Stress and Strain. The injury arose out of the employment and occurred in the course of employment as follows: Psyche and

orthopedic. Employee wrenched her back while locating, pulling and posting, then returning large atlas sheets to extremely tight file box (approximately 3 feet tall by 4 feet wide). Due to the tightness of file box often referred to as the "ice box or ice cream box" which sat on the floor and opened from the top like a floor freezer. Employee had to oscillate to perform this part of her work task. Filing and researching old leak orders in bottom drawers near the floor. The workload was increased on the job that was already known to be the heaviest district with voluminous paper work. On 6/9/86, Petitioner wrote a letter to the Superintendent asking for help and didn't receive it. The injury resulted in three herniated (ruptured) discs causing employee severe pain down right leg (Sciatic) when trying to walk with radiation to the hip and low back impairment resulting in her use of initially a crutch, next a cane and ultimately a wheelchair. Paralleled with frequent severe headaches at work, cephalgia, depression, anxiety, muscle spasms. The effects of the injuries have left employee totally disabled, wheelchair dependent, with a need for low back surgery on disks, unable to walk with a normal stride or sit straight without pain, driving limitations, bed-ridden when pain is unbearable and unable to work. The psychological effects have left employee's character defamed, memory loss, unable to .concentrate for long periods, unable to trust people, depression, traumatized and indecisive. Petitioner has been totally disabled since March 14, 1988.

Injury #2 Claim No. LBO 167123: On September 23 through 26, 1986, Brenda Hamilton, petitioner while employed by the employer as a Record Control Clerk "U" (Utility Grade). On that day, Brenda Hamilton sustained the following-described injury: Stress and Strain. The injury arose out of the employment and occurred in the course of employment as follows: Psyche and orthopedic: Employee returned to work for four days and experienced same symptoms (see description of injury #1). This injury left employee with stress and orthopedic flare-ups as experienced on 6-12-86, continuous trauma. Petitioner has been totally disabled since March 14, 1988.

Injury #3 Claim No. LBO 197762: On, June 24, 1987, Brenda Hamilton, petitioner while employed by the employer as a Record Control Clerk "U" (Utility Grade). On that day, Brenda Hamilton sustained the following-described injury: Stress and Strain. The injury arose out of the employment and occurred in the course of employment as follows: Psyche and orthopedic: While on disability employee was requested to come to work for a meeting. This meeting was grueling with harsh treatment of questioning by superintendent and supervisor. Employee told them that she could not take any more. It was during this meeting that employee experienced a ripple on her lower right side when she went to stand up. Employee experienced excruciating pain, was excused from meeting and went directly to hospital emergency room.

(see description of injury #1). Petitioner has been totally disabled since March 14, 1988.

Injury #4 LBO 198956: On, March 14, 1988, Brenda Hamilton, petitioner while employed by the employer as a Record Control Clerk "U" (Utility Grade). On that day, Brenda Hamilton sustained the following-described injury: Stress and Strain. The injury arose out of the employment and occurred in the course of employment as follows: Psyche and orthopedic: Flare-up of sciatic nerve. Under tremendous stress and strain experienced at work on March 11, 1988, employee managed to get to work on March 14, 1988, only to be told she had to see the company doctor. (see description and effects of injury on injury #1). Petitioner has been totally disabled since March 14, 1988.

Petitioner's weekly income has been inaccurately stated as $534. 32. Petitioner's weekly income should be stated as $553.04.

2-19-88 Two Week Pay Period

Description	Hours	Amount
Holiday	8.00	110.61
Regular Hours	72.00	995.47
Totals	80.00	1106.08

Math: $1106.08/2=$553.04 weekly

On approximately July 1987, and September 1989, applications for petitioner were filed for

adjudication of claim at the Long Beach Appeals Board by former attorney. For reasons beyond petitioner's control, applicant did not have an attorney when the stipulation were framed. From that point on, petitioner has been exploited by certain members of the legal and medical profession, who distorted the merits of her claims for psyche and orthopedic. A change of venue was granted to the Norwalk Appeals Board where Workers' Compensation Judge, Ralph Zamudio was assigned the case. Petitioner, in propria persona, continuously pleaded to the WCJ to please protect her rights. The judge later transferred to the Van Nuys Appeals Board. The matter came to trial on June 28, 1999, and was held before him.

The decision by the state court of last resort has departed far from the accepted and usual course of judicial proceedings. It is necessary that the questions be repeated for a clear understanding of the case explanations as to why a review should be granted.

1. Was petitioner given due process at the June 28, 1999, trial regarding psyche/orthopedic testimony?

Prior to employment with Southern California Gas Company, petitioner had no history of previous psychiatric injury. From inception of this case, petitioner's claims were for psyche and orthopedic. On October 2, 1995, petitioner received a 100% psychiatric formal rating, previously ordered by the

worker's compensation judge (hereafter referred to as WCJ). On January 22, 1998, the judge issued an adverse inference as to psyche issues.

Allegations of failure to cooperate in attending and completing defense's psychiatric medical-legal exam are false and should not nullify petitioner's industrial injury claims. Petitioner was always concerned about her benefits being protected and would never sabotage her entire case by not cooperating with doctors. Petitioner never missed a scheduled appointment without good cause. She would reschedule appointments by telephone call, if her back was in spasm.

The trial was unfair to petitioner. At the time, petitioner was unaware of what was really happening and never knew why she was not allowed the opportunity to give pertinent oral psyche testimony or documentary evidence supporting psyche cumulative injury claims at the trial. He did not explain that the psyche portion of claims had been permanently barred. The workers' compensation judge indicated he wanted to finish before lunch. The workers' compensation judge only asked petitioner to describe her job duties of 12-14 years ago. Regardless of past appearances, trial settings and continuances; the actual trial that mattered the most, psyche testimony was omitted. Significant testimony describing present and continuing psyche injury, supporting on the job injury, evident by reports from Dr. Charles Bastedo,

Dr. Stuart Gluck and John F. Tholen, Ph.D., mentioned on the August 12, 1987 report, from Dr. Moskowitz, were not introduced orally by petitioner due to unexplained events issued prior to June 28, 1999 trial. Petitioner was not given a reasonable opportunity to defend her injuries, as she was entitled under due process of law.

Being in propria persona, the judge should have explained the meaning of adverse inference. The WCJ erred by drawing an adverse inference trading my 100% psyche rating for non dismissal of the case at that time.

WCJ should have advised petitioner of certain rights prior to attending any medical-legal exams. Petitioner would have had her physician present at all medical-legal exams under Labor Code Section 4052. Presence of employee's physician.

"The employee may employ at his own expense a physician, to be present at any examination required by his employer."

Also, petitioner would have had her physician present at the hearing to support petitioner's credibility under Labor Code Section 4055. Physician's report.

"Any physician who makes or is present at any such examination may be required to report or testify as to the results thereof."

The right of having unrepresented workers' physician present at all medical-legal evaluations and having that physician available for testimony regarding exams along with the medical-legal evaluator's report plus the benefit of mandatory videotape, would have prevented the unfounded adverse inference.

2. For the sake of this case and future cases, should colored videotape with audio be mandatory at all workers' compensation's comprehensive medical-legal evaluations, to protect petitioner's credibility, benefits and entire claim(s), thus preventing the judge from entertaining and granting a motion to draw adverse inference?

That is the only way injured workers, particularly unrepresented petitioners, can be truthfully assessed and if labeled as uncooperative, be exonerated should there exist discrepancies in interpretation; like what happened to petitioner. To protect petitioner's privacy, the videotaped session should be confidential and not become a part of his or her public record. Having QME/IME/AME doctors sign under penalty of perjury is not enough when the fate of petitioner's case can be solely determined by one doctor's report that was not the treating physician at the time of injury and made more than ten years later. *Smith v. W.C.A.B.* (1969) 78 Cal. Rptr. 718 (34 Cal. Comp. Cases 424). Based on that court case, petitioner only has one shot at making an impression.

Therefore, if these comprehensive medical-legal evaluations are videotaped in color with sound, petitioners can not be unfairly labeled as "uncooperative" thus protecting the reputation of petitioners and doctors. This way the workers' compensation judge, legal counsel for both sides, QME/IME/AME doctors and unrepresented petitioners can all be given copies to view for themselves, exactly what transpired during the evaluations, prior to trial or submission on record.

3. Did the worker's compensation judge err by failure to mention at the June 28, 1999, trial and in his Order, Opinion and Report that petitioner needs back surgery, is wheelchair-dependent with three herniated discs in lower back, supported by Dr. Moskowitz's February 10, 1987 and August 12, 1987 reports?

By omitting petitioner's need and use of a wheelchair at court appearances and long-time use of wheelchair at the June 28, 1999, trial and nowhere in his Order, Opinion and Report, other courts could not realize the severity and seriousness of petitioner's industrial orthopedic injuries. Petitioner has not worked anywhere else since the industrial injuries at Southern California Gas Company nor received any monetary compensation for her injuries. *Smith v. W.C.A.B.* (1969) 78 Cal. Rptr. 718 (34 Cal. Comp. Cases 424). It states that records revealed the doctor was unaware that Smith's work was strenuous as was petitioner's workload and job duties. This shows that

sometimes pertinent information, supporting claims, is left out. Petitioner's duties were minimized by the job analysis produced at trial and only described one of the two desks she worked.

WCJ Zamudio based his ruling on a job analysis of Administrative Clerk 3 dated June 26, 1998, that was presented at the June 28, 1999 hearing. That job analysis does not accurately describe petitioner's actual job duties prior and up to June 12, 1986. Petitioner's job was to perform duties as a U Grade Utility Records Control Clerk. Petitioner had to work both Leakage & Permit desks. Copies of job analysis for the Leakage desk and Permit desk, effective June 1986, were not produced. All job duties are not necessarily printed on job analysis. S.C. Gas Company has had 12 plus years to critique employee safety guidelines and time to establish new technology to simply previous job duties.

According to the June 26, 1998 job analysis, a video tape of the Administrative Clerk 3 position, unseen by petitioner, was also admitted into evidence, supposedly depicting the actual job duties performed by the Leakage Clerk. Defense has never furnished petitioner with a copy of that video tape to review or challenge depiction.

Petitioner maintains that injury occurred while working at Southern California Gas Company performing repetitive duties-posting, filing and retriev-

ing large atlas sheets from tight files, often referred to as the "ice box/ice cream box." This task required awkward bending, pulling and twisting, etc. Petitioner was informed by an employee that after filing her workers' compensation claims, the company removed the "icebox/ice cream box."

4. Did the worker's compensation judge err by rendering all other issues moot, when there is no other court to collect work related funds?

Stipulations set at the 5/22/91 hearing included provision for reimbursement of uncashed checks. Southern California Gas Company owes petitioner money totaling more than $3,000.00 for stale dated payroll checks, dividends, credit union, mileage reimbursement checks for doctor visits. The Workers' Compensation Board was the only court for petitioner's recourse. Petitioner is now unable to recover money owed to her from defendant.

5. Did the California State Supreme Court and the lower courts err by upholding W.C.A.B.'s decision to deny petitioner's two witness' statements as evidence at trial, to support petitioner's claims at the time of injuries and allow defense's eight witness' statements unsigned, into evidence which were not signed under penalty of perjury?

At the October 13, 1992 hearing, WCJ ordered under exhibits that petitioner's statements of Barbara

Marbley and Andrell Geiggar to be filed by petitioner within thirty days. Petitioner filed and board stamped her two witness' statements on time. Seven long years had past and he did not mention to petitioner that her two witness' statements were unacceptable prior to the 6/28/99 trial. During those seven years, petitioner was in propria persona and WCJ did not instruct petitioner as to the proper/acceptable format of witness' statements nor did he present petitioner with the opportunity to correct the format of the two witness' statements to meet his approval. WCJ did not ask if petitioner had any witnesses to call at the June 28, 1999 trial.

Petitioner had two witness co-workers of Southern California Gas Company subpoenaed and they took off work and appeared for trial at the Long Beach Board. At that time, the trial did not go forward, as petitioner was told there was a problem between her hearing rep and the defense attorney. There existed a conflict of interest since the hearing rep had previously worked for the defense. Petitioner's two witnesses have been on call from that day on. Defendant maintains the two witnesses could not be summoned, reached for verification nor located, yet both are still employed by his client, Southern California Gas Company. Many of the continuances were requested by the defense, when at a disadvantage.

Defense, not the board, sent records to all four

IME doctors. Petitioner's two witness' statements were excluded. Defense claimed it was an oversight. Damaging hearsay testimony from eight witnesses for the defense was incorporated into doctors' evaluations. Petitioner's two witness statements were later sent for review. It was too late. The doctor's had already formed their opinions. Defense's marshaled eight witness' statements were not signed nor were they signed under penalty of perjury, yet WCJ allowed defense's statements and marked petitioner's witness' statements as "identification only," a miscarriage of justice. WCJ told petitioner that he thought the eight witness' statements, gathered by defense, help petitioner's case at trial. To the contrary, they were damaging and only helped to justify his findings against petitioner and destroy the merits of the case on record by letting them be incorporated into the IMEs reports.

6. With petitioner's medical records of Dr. Moskowitz, supporting claims that low back injury had been reported to her employer at time of injury number one, why was the on the job injury questionable?

Dr. Richard Woods' report dated April 24, 1996 states:

"Upon review of Dr. Kornblum's February 8, 1996 comprehensive report, I respectfully disagree with that physician's conclusion that the patient had not sustained any specific work-related injury, nor any continuous or repetitive trauma while at work. The medical records of Dr. Moskowitz supports her

contention that she had reported her low back condition as related to her employment, due to the increase in her workload. Although I do not believe that her low back condition was caused by the stress of her increased workload, I believe it was caused by the physical requirements of her job, as well as the physical aspect of the increased workload. Upon reviewing the patient's 20-year medical history, one cannot delete her periods of injurious exposure while working for Southern California Gas Company."

7. In voluminous cases, should full weight of a decision be based only on the defense's IME evaluator's report that contains numerous errors to support a 100% denial of industrial injury, (So. Cal. Gas Company) while petitioner's IME evaluator states that there is industrial injury caused by Southern California Gas Company?

Petitioner continuously requested submission on record prior to being forced/ordered to see Agreed Medical Evaluators (Dr. Richard Ness & Dr. S. Sanford Kornblum, defense's doctors & Dr. Joel Frank and Dr. Richard Woods, petitioner's doctors) because petitioner has seen several doctors for the defendant and they all put untruths in their reports, such as taking statements made by petitioner and twisting them to suit their needs. Had WCJ submitted on record prior to those evaluations, he would not have been blinded by defense's bogus tactics.

Medical Inaccuracies in Dr. Kornblum's 2/8/96 report

Applicant thought Dr. Kornblum was a doctor chosen by the defense/employer for a physical exam only. When applicant received a copy of the doctor's report it read disability evaluator by the state.

Wrong: Report says that applicant declined to give a medical history.

Truth: Applicant didn't decline to give a medical history, rather she asked to be allowed to go home and get her files to avoid giving any wrong information, but was told "NO." Dr. Kornblum misinterpreted applicant's caution in providing detailed information as "Declining" or "Being Uncooperative" in giving medical history.

Wrong: The first fascicle begins with the May 5, 1987 report from Orange Coast NeuroMedical Group.

Truth: First fascicle began on June 12, 1986. A comprehensive narrative report was requested from petitioner's physician, Dr. Moskowitz, by Southern California Gas Company from Peggy Anderson of human resources on February 6, 1987. Dr. Moskowitz's report dated 2/18/87 was sent to Southern California Gas Company supports applicant's claims and date of industrial injuries commencing on 6/12/86. This report was inaccurately referred to as Dr. Latteri's report on Dr. Kornblum's report. The lumbarsacrial (low back area) and right leg was treated with therapy initially, due to severe pain. Heat treatments were administered on 6/12/86, the first day of industrial injury.

Wrong: Orange Coast NeuroMedical Group says that there is no specific injury.

Truth: Injury is suggestive of repetitive motion. Clinical signs of at least sensory with some motor involvement of the S1 nerve root on the right side.

Consult Assessment: Mild S1 radioculopathy with clinical findings though missing significant EMG abnormalities. The lack of H reflexes or absence of them are suggestive of the S1 nerve root abnormalities. Dr. Cleeremans' report from Orange Coast Medical actually says, "Patient may eventually get to the point where conservative management no longer works and she may elect surgical option for treatment." Patient was unable to return to work.

Wrong: "Ct scan of the spine, February 10, 1987: L3-4, 2mm disc protrusion. L4-5, 3mm disc protrusion or herniation with stenosis. L5-S1, mild central disc protrusion or herniation of 3mm", which was incomplete.

Truth: "At L5-S1, there is also a mild central disc protrusion or herniation seen (3 millimeter disc protrusion). Slight bilateral neural foraminal stenosis is noted, and there is some swelling of the S1 nerve root on the right", conveniently omitted yet an integral part of the Ct scan.

Wrong: "Then, there was radiation into the hip and back and this area was added."

Truth: Hip and back were part of the initial injury, described as part of lumbarsacrial spine, as patient could not walk (move hip/right leg without severe pain).

Wrong on Dr. Joseph Moskowitz's 2/18/87 report: Dr. Alexander Laterri's report says that patient was disabled to June 13, 1986 to June 3, 1987.

Truth: Applicant was/is disabled starting June 12, 1986. to June 24, 1987. On June 16, 1987, while on disability, employee received a letter from her then Supervisor, Carolyn Melrose, requesting her to attend a meeting at the job, on June 24, 1987, at the Compton office, for the purpose of discussing her medical history. A discussion arose concerning employee's job application. Union Representative, Albert Demilis, accompanied employee to meeting. The question was asked, "Why didn't you put on your employment application that you previously filed a claim against your former employer?" The union representative advised applicant not to answer that question until we find out what the charges are. Carolyn Melrose said that if I didn't answer the question, both of us would be terminated. We recessed and called the union president. The union president had advised us both prior to returning to the meeting that they had all the necessary documents in front of them and to go back and answer the questions. Applicant responded, "If the question was asked, I truthfully answered it." The union representative asked to see the application and was told the company did not have it, but they would get it. During the meeting employee went to stand up and experienced a rippling on her side. Employee went to the doctor on the same day for that injury,

where she was then currently being treated for her 6/12/86 injuries.

Applicant was wrongfully terminated while on disability and reinstated from wrongful termination, back to disability status. Southern California Gas Company would not and did not reinstate employee benefits to her. The Union was suppose to reinstate all her benefits, as applicant was fully vested in the company (union book states after 5 years, employee is fully vested in company, retirement benefits). The union kept telling applicant she had to wait until she returned to work and then they would reinstate her shares (they had issued her a stock certificate during the wrongful termination period and was supposed to put her shares back). When applicant returned to work in late January 1988, company still would not reinstate petitioner's shares to former status prior to wrongful termination.

Employee remembers attending a union meeting and asked to fill out, date and sign a general physical examination history questionnaire. This meeting took place after the 6/12/86 termination. At that time, Pat Douglas was the supervisor.

August 12, 1987, Dr. Moskowitz's report indicates first seen. Petitioner was first seen on June 12, 1986, for stress and orthopedic.

April 13, 1992, at the hearing, applicant started

hyperventilating with severe chest pains at the Workers' Compensation Board. The paramedics were called and applicant was taken to Saint Mary's Hospital. Applicant did not just leave, as defense would have the judge believe. Applicant was given some type of injection on her buttocks that caused a harmful reaction (possibly Toradol). The next day, applicant had to go Coastal Community Hospital. April 15, 1992, applicant had Echo-Doppler-Color Flow Mapping Report. Applicant was diagnosed with an anterior mitral valve prolapsed. IMPRESSION: Mild mitral regurgitation. Trace tricuspid regurgitation.

MRI Scan of September 11, 1992. Interpretation is ambiguous regarding nerve compression.

Due to page limits on this Writ of Certiorari, the remaining multitude of inaccuracies, which were equally important, contained in Dr. Konblum's report can not be anatomized or dissected. For example, petitioner never received any compensation for injury described on May 12, 1990.

The errors were so overwhelming that petitioner was too traumatized to correct Dr. Woods' report as requested, as he incorporated parts of Dr. Kornblum's report in his report.

Petitioner feels Dr. Kornblum's report is slanderous, absurd and a miscarriage of justice for

him to write, "There is no reason why she cannot perform all of her regular work activities.

Dr. Richard Ness' 2/27/96 Report

All information contained in Dr. Richard Ness' report is farce! His exam sheet asked, "Do you enjoy dancing?" (How humiliating, as applicant loved to dance and can not in her present condition caused by Southern California Gas Company.) How can applicant honestly answer with a true or false. The test did not allow applicant to answer truthfully. There was not room on the test sheet to give essay style answers. Since, applicant was unable to answer this question and similar questions like this one; it is not fair to label her as "uncooperative." Doctors should not be on the AME list if they are going to use and implement unfair tests that penalize applicants. Applicant could not complete testing due to medical block of some type.

Often QME/IME/AME doctors' reports discredit (particularly unrepresented) petitioner's then current medical reports at the time of injuries giving doctors a loophole to distort the truth and label petitioners as uncooperative at their discretion by signing under penalty of perjury.

QME/AME/IME doctors carry reputations as being "pro-petitioner" or "pro-defense." Against petitioner's objection and numerous request for

submission on record of original doctors' reports, petitioner was ordered to see such doctors. QME/AME/IME doctors only to support the ruling in the Finding of Facts.

Regarding psyche/orthopedic evaluations, in petitioner's case, it created a loophole for the employer to document on record, that petitioner has a delusional disorder to discredit the injured worker's valid claims for psyche/orthopedic benefits. If petitioner was unable to complete any medical testing, it was due to petitioner's disability. Substantial evidence was misrepresented.

Petitioner has always had the highest regard for the workers' compensation process, contrary to the opinion of defense or judge. Petitioner, at all levels, has been cooperative and would never intentionally sabotage petitioner's own case.

8. Was petitioner misrepresented by her IME psyche doctor, Joel Frank. by labeling her as uncooperative?

Dr. Joel Frank misrepresented petitioner by labeling her as uncooperative during the examination on his report. This was contrary to what transpired. Petitioner was very cooperative as she tried to answer all questions presented to the best of her ability. However, many of the written questions could not be answered true or false, with accuracy. Petitioner has never had a history of drug or alcohol use or abuse.

For example question 35 reads: My drug habits have often gotten me into a good deal of trouble in the past. If answered true or false, petitioner would wrongfully be admitting to abuse. Another patient was there questioning how to answer various questions on the same questionnaire while petitioner was taking her written exam. Petitioner had a witness there who could verify full cooperation.

When Dr. Joel Frank returned from lunch, prior to the oral exam, he appeared to be intoxicated. Petitioner did not want to hurt her case by speaking the truth about the doctor's demeanor, since he was petitioner's physician. His negative report was damaging to the petitioner.

9. Did the worker's compensation judge err in issuing a Finding of Fact blocking all chances of appeal rather than leaving the disputed issues for resolution at trial?

Petitioner, in propria persona, could not find an attorney willing to represent her at trial. If your case has had more than one or two lawyers, regardless of the reasons, no one wants to represent you. Lawyers say there is no monetary gain for them. Unaware of what may have transpired at a hearing, petitioner's rights to a fair trial was impeded. Petitioner was not aware or given a copy of a formal request nor present for a Finding of Fact hearing to her knowledge.

10. Did the California State Supreme Court and lower courts err by upholding a Workers' Compensation Board's decision after the 30 day submission rule by not allowing a new trial under a writ of mandamus?

Labor Code Section 5313. Decision of Appeals Board or worker's compensation judge.

"The appeal board or the workers' compensation judge shall, within 30 days after the case is submitted, make and file findings upon all facts involved in the controversy and an award, order, or decision stating the determination as to the rights of the parties. Together with the findings, decisions, order or award there shall be served upon all the parties to the proceedings a summary of the evidence received and relied upon and the reasons or grounds upon which the determination was made."

Labor Code Section 5309. Appeals Board power over worker's compensation judge.

"The appeals board may, in accordance with rules of practice and procedure which it shall adopt and upon the agreement of the parties, on the application of either, or of its own motion, and with or without notice, direct and order a worker's compensation judge:

(a) To try the issues in any proceeding before it, whether of fact or of law, and make and file a finding, order, decision, or award based thereon."

WCJ erred in not issuing a decision on time. The Joint Findings and Order was not issued until 93 days after the submission on record, nor was it filed in a timely manner as prescribed by law. The Van Nuys Appeals Board has jurisdiction over their judges and should have produced a decision when it became obvious the WCJ had not issued a decision. Both the Appeals Board and the judge violated the law.

11. Did the WCJ misapply *Place v. W.C.A.B.* in this case?

Place v. W.C.A.B. refers to an injured worker who had back surgery. This case law does not apply. Petitioner has never had back surgery, but is in need of back surgery from her industrial injuries sustained while working for S.C. Gas Company. There are various doctor reports supporting petitioner's claims of 6/12/86.

Petitioner has suffered with low back pain for many years while anticipating a favorable finding, which would order her employer, S.C. Gas Company, to cover the cost of surgery on her back with future medical. The decision of the state courts ruling has allowed the defendant to defray their cost.

REASONS FOR GRANTING WRIT OF CERTIORARI

Petitioner has not received any monetary compensation from this workers' compensation case and is aggrieved by the decisions of the lower courts

in that she take nothing by way of her applications for adjudication of claims for her industrial injuries sustained while working for Southern California Gas Company. The preposterous decision is the basis for the writ of certiorari.

Petitioner sought legal advise the summer of 1987. The law firm of Cantrell and Green, Pekich and Zachs filed claims on her behalf. Marilyn Green represented petitioner. The law firm of Lawrence Drasin and Associates attorney William Lorenzetti represented petitioner (petitioner's presence was not allowed at that hearing). He never officially signed on with the Long Beach Board as the attorney of record, petitioner learned he couldn't represent her because there existed a conflict of interest. Next, Robert Rice, a hearing representative at the time, took the case. Again, a conflict of interest existed. He previously worked(s) for the defense counsel, Theodore Penny. Subsequently, Mark Poland was the last attorney to represent petitioner. He only represented petitioner at one hearing (petitioner's presence was not allowed at that hearing). Mr. Poland was hired to produce a settlement, which did not occur. Since then, petitioner has been in propia persona, as no other attorney would take her case, due to these unfortunate circumstances. Petitioner is a victim of the professional system and forced to represent herself because her lawyers did not let her be present at hearings/trial settings. Petitioner/other applicants in similar cases should not be penalized by judges for

not taking a settlement they know is unreasonable, doesn't cover surgery and no future medical.

WCJ destroyed petitioner's case by not submitting on record fourteen days after the October 13, 1992, hearing. By forcing independent medical examinations, WCJ allowed doctors to label petitioner as uncooperative. Petitioner's request to go home to retrieve her files to avoid giving incorrect information was denied by Dr. Kornblum. Petitioner proceeded with the exam. This act was translated by the doctor as a refusal to cooperate, which is misconduct and an obstruction of justice.

Dr. Richard Ness' report added to petitioner's psychological injuries. He calls petitioner a bad liar thus defaming petitioner's character. The report prepared by Dr. Ness is far, far from the truth, is a travesty of justice and a severe distortion of the truth regarding psyche industrial injury. Prior to working for Southern California Gas Company, petitioner had no history of mental illness. At trial, reports supporting psyche claims from Shoreline Medical should have been submitted.

Dr. Joel Frank, petitioner's psyche IME doctor, medically misreprensented petitioner, ruining the creditability of claims by issuing a negative report. Petitioner was very cooperative, contrary to his report.

The trial became one-sided when petitioner's two witness' statements weren't allowed into evidence.

Injured workers should have the freedom of choice to decide whether to be present at hearings/trials, with their attorneys, so they don't end up misrepresented or unrepresented like petitioner. It is of great importance to the working class American public, to know their rights will be protected under the workers' compensation medical/legal system and if forced to attend comprehensive medical-legal evaluations; colored videotape with sound should be mandatory at all such evaluations. To guard petitioner's privacy, the videotape should be confidential and not be a part of the public record.

The mandatory 30 day submission rule under Labor Code Section 5313 was violated. It took 93 days. Petitioner is left physically and psychologically damaged, wheelchair dependent and in need of back surgery along with a lot of out of pocket expenses pursuing the case.

The Supreme Court should seriously consider the questions presented under such extraordinary circumstances and grant a petition for writ of certiorari.

CONCLUSION

The petition for writ of certiorari should be granted.

Dated: March 9, 2001

Respectfully submitted,

Brenda Hamilton
4471 E. Vail Street
Cerritos, CA 90703
(562) 860-9569

APPENDIX

STATE OF CALIFORNIA
WORKERS' COMPENSATION APPEALS BOARD

BRENDA HAMILTON,	CASE NOs. LBO 167122;
Applicant,	LBO 167123;
vs.	LBO 197762;
SOUTHERN CALIFORNIA GAS CO.;	LBO 198956;
PERMISSIBLY SELF-INSURED,	
Defendants.	

JOINT FINDINGS AND ORDER

The above-entitled matter having been heard and regularly submitted, the Honorable Ralph Zamudio, Workers' Compensation Judge, now makes his decision as follows:

FINDINGS OF FACT

(1) BRENDA HAMILTON, born 11/18/45, while employed as a records clerk (group 40) at Compton, California by SOUTHERN CALIFORNIA GAS COMPANY, then PERMISSIBLY SELF-INSURED, did NOT sustain injury arising out of and in the course of employment to the psyche and orthopedic (spine and legs) on June 12, 1986 (LBO 167122), and during the period from 9/23/86 to 1987 (LBO 167123), and during the period from 1/27/88 to 3/14/88 (LBO 197762), and on June 14, 1987 (LBO 198956).

(2) Jurisdiction is reserved over an outstanding medical-legal liens with parties to attempt informal resolution of said lien claims, or to be determined in supplemental proceedings upon filing of a declaration of readiness.

(3) Jurisdiction is reserved over the issue of Applicant's claim for Labor Code section 132a benefits and relief which was bifurcated from the pending proceedings, and remains off-calendar.

(4) All other issues are rendered moot.

ORDER

IT IS ORDERED that applicant TAKE NOTHING by way of her Applications for Adjudication of Claim.

IT IS FURTHER ORDERED that jurisdiction be reserved over any outstanding medical-legal lien claims in accordance with Findings of Fact No. 2, above.

"s/Ralph Zamudio".
WORKERS' COMPENSATION JUDGE

DATED: 9-29-99

Filed and Served by mail on
above date on all parties/liens
on the Official Address Record.
By: "s/Mary Garcia".

CASE NOs. LBO 167122; LBO 167123;
LBO 197762; LBO 198956

BRENDA HAMILTON v. SOUTHERN CALIFORNIA GAS CO.; PERMISSIBLY SELF-INSURED

DATES OF INJURY: JUNE 12, 1986; 9/23/86 TO 1987; 1/27/88 TO 3/14/88; 1/27/88 TO 3/14/88; JUNE 24, 1987

WORKERS' COMPENSATION JUDGE: RALPH ZAMUDIO
DATE: SEPTEMBER 29, 1999

JOINT OPINION ON DECISION

Applicant, Brenda Hamilton, born 11/18/45, while employed as a records clerk (group 40) at Compton, California by Southern California Gas Company, then permissibly self-insured, claims to have sustain injury arising out of and in the course of employment to the psyche and orthopedic (spine and legs) on June 12, 1986 (LBO 167122), and during the period from 9/23/86 to 1987 (LBO 167123), and during the period from 1/27/88 to 3/14/88 (LBO 197762), and on June 14, 1987 (LBO 198956). Defendant denies injury AOE/COE, and has provided no benefits in connection with said disputed claims.

The cases were consolidated, and tried at hearings held on 5/22/91, 9/21/92, 10/13/92, 2/10/94, 11/27/95, and 6/28/95. Voluminous documents, and medical reports were received in evidence, including but not limited to Job Analysis dated 6/26/98, medical reports of Dr. Richard Woods dated 10/30/97 & 4/24/96, and Dr. Joel Frank dated 7/29/96 & 12/3/96, and Dr. S. Sanford Kornblum dated 2/8/96, and Dr. Richard Ness dated 2/27/96. The record reflects that an Order Granting [Defendant's] Motion to Draw Adverse Inference As To Psyche Issues issued on January 22, 1998, for the reason set forth therein, and good cause appearing in light of the entire record.

The undersigned has had opportunity to review the record, including documentary evidence, designated subpoenaed records, medical reports, and to consider the trial and deposition testimony given by Applicant. Not persuasive nor convincing is testomy of Applicant. Full weight is given to the medical opinion of Dr. S. Sanford Kornblum dated 2/8/96, and Dr. Richard Ness dated 2/27/96. It is well established that the relevant and considered opinion of one physician, though inconsistent with other medical opinions, may constitute substantial evidence. *Place v. W.C.A.B.* (1970) 3 Cal. 3d 372, 90 Cal. Rptr. 424, (35 Cal. Comp. Cases 525). In addition, based upon review of the record, and the above-mentioned 1/22/98 order granting motion to draw an adverse inference as to psyche issues, an adverse inference is drawn against Applicant as to

issues of psychiatric injury AOE/COE, and extent of psychiatric disability.

Based upon review of the entire record, including but not limited to the medical opinion of Dr. S. Sanford Kornblum dated 2/8/96, and Dr. Richard Ness dated 2/27/96, and the above-mentioned adverse inference drawn as to Applicant's claim of psychiatric injury and disability, it is found that Brenda Hamilton, born 11/18/45, while employed as a records clerk (group 40) at Compton, California by Southern California Gas Company, then permissibly self-insured, did NOT sustain injury arising out of and in the course of employment to the psyche and orthopedic (spine and legs) on June 12, 1986 (LBO 167122), and during the period from 9/23/86 to 1987 (LBO 167123), and during the period from 1/27/88 to 3/14/88 (LBO 197762), and on June 14, 1987 (LBO 198956).

Jurisdiction is reserved over any outstanding medical-legal liens with parties to attempt informal resolution of said lien claims, or to be determined in supplemental proceedings upon the filing of a declaration of readiness to proceed.

Jurisdiction is reserved over the issue of Applicant's claim for Labor Code section 132a benefits and relief which was bifurcated from the pending proceedings; and remain off-calendar as set forth in the Minutes of Hearing.

All other issues are rendered moot. Applicant to take nothing by way of her Applications for Adjudication of Claims.

"s/Ralph Zamudio".
WORKERS' COMPENSATION JUDGE

CASE NOs. LBO 167122; LBO 167123;
LBO 197762; LBO 198956

BRENDA HAMILTON v. SOUTHERN CALIFORNIA GAS CO.; PERMISSIBLY SELF-INSURED

DATES OF INJURY: JUNE 12, 1986; 9/23/86 TO 1987; 1/27/88 TO 3/14/88; 1/27/88 TO 3/14/88; JUNE 24, 1987

WORKERS' COMPENSATION JUDGE: RALPH ZAMUDIO
DATE: NOVEMBER 22, 1999

REPORT OF WORKERS' COMPENSATION JUDGE ON PETITION FOR RECONSIDERATION

INTRODUCTION

Applicant, Brenda Hamilton, born 11/18/45, while employed as a records clerk (group 40) at Compton, California by Southern California Gas Company, then permissibly self-insured, claims to have sustain injury arising out of and in the course of employment to the psyche and orthopedic (spine and legs) on June 12, 1986 (LBO 167122), and during the period from 9/23/86 to 1987 (LBO 167123), and during the period from 1/27/88 to 3/14/88 (LBO 197762), and on June 14, 1987 (LBO 198956). De-

fendant denies injury AOE/COE, and has provided no benefits in connection with said disputed claims

On September 29, 1999, a Joint Findings and Order issued in the above-entitled case ordering that applicant take nothing by way of her claims. On October 22, 1999, applicant (hereafter petitioner) timely filed a verified petition for reconsideration from said joint findings and order.

Petitioner asserts that by the order, decision or award the board acted without or in excess of its powers, that the order, decision, or award was procured by fraud, that the evidence does not justify the findings of fact, the findings of fact do not support the order, decision or award, and that she has discovered new evidence material to her which she could not with reasonable diligence have discovered and produced at the hearing.

Specifically, petitioner contends it was error to rely upon the medical opinions of Dr. S. Sanford Kornblum, and Dr. Richard Ness, and that it was error to draw an adverse inference against her with regard to her claims of alleged psychiatric injury. Petitioner further contends it was error not to award her temporary disability, permanent disability, reimbursement for self-procured medical treatment, penalties, vocational rehabilitation, and Labor Code section 132a benefits. She further asserts she has "new evidence that corroborate her industrial injuries" via reports of Dr. Joseph Moskowitz and Dr. Yee Wing

Fong (which are among the documents she attaches to the petition).

FACTS

The cases were consolidated, and tried at hearings held on 5/22/91, 9/21/92, 10/13/92, 11/27/95, and 6/28/95. Voluminous documents, and medical reports were received in evidence, including but not limited to Job Analysis dated 6/26/98, medical reports of Dr. Richard Woods dated 10/30/97 & 4/24/96, and Dr. Joel Frank dated 7/29/96 & 12/3/96, and Dr. S. Sanford Kornblum dated 2/8/96, and Dr. Richard G. Ness dated 2/27/96. The record reflects that an Order Granting (Defendant's) Motion To Draw Adverse Inference As To Psyche Issues issued on January 22, 1998, for the reasons set forth therein, and good cause appearing in light of the entire record.

Petitioner claims to have sustained industrial injury to the psyche and orthopedic (spine and legs) on June 12, 1986 (LBO 167122), and during the period from 9/23/86 to 1987 (LBO 167123), and during the period from 1/27/88 to 3/14/88 (LBO 197762), and on June 14, 1987 (LBO 198956) while employed by defendant as a records clerk. She worked for defendant from approximately 1982 to 1988. After her initial termination in 1987, she retained counsel and filed the pending claims.

Petitioner has a history of prior and subsequent injuries. In 1976, she suffered a low back strain following which she received treatment and lost time from work. In December of 1977, she suffered a sprain injury to the neck and back for which she consulted a neurologist, Dr. Alan Cohen, in April of 1978. Subsequently, she was seen at La Palma Hospital in 1978 with complaints to the neck and low back after suffering a twisting injury at home a few months previous. On August 31, 1979, she suffered low back pain after moving a cabinet and sweeping at work while employed by the Bank of America. She filed a workers' compensation claim for that injury (CSO 002783). She was seen by Dr. McCann with complaints of pain to the neck, back and right shoulder on December 18, 1979, in connection with the said industrial injury claim. Dr. Murphy on behalf of the Bank of America also evaluated her on 5/19/80 who declared petitioner permanent and stationary with minimal subjectives, and no apportionment. On 12/9/90, Dr. McCann declared her permanent and stationary with a restriction from no very heavy lifting. On 9/18/84, a compromise and release of petitioner's then pending industrial injury claim to the neck, back, and right upper extremity was approved in the sum of $1,360.00 (CSO 002783).

She began her employment by defendant (Southern California Gas Company) in approximately 1982 as a clerk. In the mid-1980's, there were problems at work. She demonstrated poor work per-

formance. There were attendance and tardiness problems. She exhibited paranoid behavior, and co-workers and supervisors had trouble working with her. She alleged injury to the back and stress at work. Petitioner's work performance deteriorated. She was terminated in 1987, for failure to disclose on her employment application that she had filed a workers' compensation claim against a prior employer (Bank of America). She retained counsel. After filing a grievance, she was reinstated that same year. She returned from a disability leave in January of 1988, after which she continued to demonstrate bizarre behavior at work. Her employer referred her to Dr. Randolph C. Seybold in March of 1988, who recommended she not return to work until seen by a psychiatrist or psychologist. After retaining counsel in 1987, she filed the pending industrial injury claims.

At the request of her attorney, petitioner was seen by Dr. Stuart B. Gluck and John F. Tholen, Ph.D., for psychiatric re-evaluation on 10/20/89 [Dr. Gluck first examined her on 10/20/88]. Their diagnosis was Delusional (Paranoid) Disorder, Persecutory type; Major Depression in partial remission; Psychological Factors Affecting Physical Condition, in partial remission. In their opinion, she was permanent and stationary with ratable work function impairments. They further opined that it was the deterioration in her ability to work caused by the onset of Paranoid Disorder that caused defendant to refer her to a doctor (Dr. Randolph Seybold) in March of 1988 who then placed her on medical leave. They

concluded it was the work stress suffered between 1982 and 1988 that played a principle factor in the onset and perpetuation of her then current psychiatric disability. They found no basis for apportionment to non-industrial. For her various complaints, she had been evaluated and treated by Dr. Joseph Moskowitz on her behalf. On 5/26/89, she was declared P&S orthopedically by Dr. Alexander Laterri who opined that petitioner had sustained a cumulative trauma injury to the lumbosacral spine as a result of her work at defendant. Among the other things, he recommended she precluded from heavy work. He found no basis for apportionment. On March 2, 1990, her attorney referred her to Dr. Yee Wing Fong for pain management evaluation and treatment. The physician recommended treatment and opined that she was then totally disabled.

On May 12, 1990, petitioner suffered a non-industrial motor vehicle accident while riding as a passenger in a car. She retained a personal injury attorney, and filed a civil lawsuit against the other driver [Hamilton v. Watanabe] alleging injury to her body. She received treatment for that auto accident injury from Dr. Tang in 1990 and 1991. Dr. Tang's treatment progress notes reflect that she experienced acute myofascial back pain, bilateral sciatica, with pain to right leg post-auto accident.

In connection with a then pending industrial injury claim, and while still represented by counsel, petitioner was seen psychiatrically on her own behalf

by Dr. Charles E. Bastedo, a MFCC, on 12/11/91 who issued a report of that date finding her pyschiatrically injured on an industrial basis, and in need of treatment.

In rebuttal to the psychiatric injury claim, defendant obtained a report from Dr. Arnold L. Gilberg dated 2/17/89. The defense psychiatrist opined that she did not suffer from any type of psychiatric disorder attributable to her employment at defendant. He further noted that she tended to focus on interpersonal and intrapersonal problems onto her work environment. Said environment a contributing factor in her then current psychiatric condition [non-industrial dysthymic disorder with anxious features; personality disorder, borderline state with paranoid features]. He further opined that she could not work on a full-time basis. Orthopedically, Dr. Paul D. Levitt opined on 7/13/88 that petitioner was permanent and stationary. The subjective complaints referable to the low back were unsubstantiated by any evidence of orthopedic abnormality on clinical examination. His review of petitioner's job analysis revealed that she had a very light job, and that her maximum lifting did not appear to exceed ten pounds. He found no evidence of industrial cumulative injury. Her subjective complaints were apportioned 100% to the natural progression of her non-industrial pre-existing disease condition. On re-evaluation on June 15, 1989, his opinion did not change.

The matter ultimately came on the trial calendar at Long Beach district office of the WCAB on May 22, 1991. At that point, petitioner had discharged her prior attorneys and appeared in propia persona. Because the matter could not be resolved, the assigned trial judge (WCJ Jessie Louie) opened the record, and commenced proceedings as set forth in the Minutes of Hearing. Stipulations and issues were framed, and the matter was continued to September 12, 1991. At the subsequent hearing date, the matter was not tried. Apparently, attempts at settlement were made, but proved unsuccessful. The matter was continued on notice to December 18, 1991. The matter was continued several times thereafter until it again came on the trial calendar in Long Beach on April 13, 1992. However, trial did not commence because petitioner left the proceedings due to illness. Thereafter, on motion by petitioner and over defendant's strenuous objection, venue was transferred to the Norwalk district office of the WCAB. The matter was ultimately reset on the trial calendar before the undersigned on September 21, 1992.

As set forth in the Minutes of Hearing of 9/21/92, petitioner appeared for trial in propia persona having dismissed her then most recent attorney on or about July 30, 1992. Petitioner objected to proceeding to trial on said date believing the matter had been set for conference rather than trial. At said hearing, she also expressed objection to the appointment of an independent medical examiner in orthopedics, neurology, or psychiatry. Over defen-

dant's objection the matter was continued to trial on October 13, 1992. At said subsequent hearing, additional exhibits were received into evidence, and petitioner agreed that the case would be referred to the Industrial Medical Council for appointment of IMEs in psychiatry and orthopedics following which parties would agree to submit the matter for decision based on the documentary and medical evidence waiving their right to cross-examine.

Thereafter, having had an apparent change of heart about agreeing to submit to IME examinations, petitioner wrote to then Assistant Chief of the Division of Workers' Compensation, Mark L. Kahn, on October 22, 1992, requesting that the disposition given at the hearing held on 10/13/92 be set aside. On February 4, 1993, Assistant Chief Kahn wrote to petitioner advising her that he had investigated her complaint, and found the IME referral to be proper procedure and within the discretion of the trial judge.

Thereafter, petitioner failed to attend and/or complete the IME evaluations scheduled with Dr. Lee Yoseloff (psychiatrist) on 10/6/93, and Dr. Frederick Reed (orthopedist) on 10/13/93. Thereafter, a hearing was held on February 10, 1994, to address petitioner's failure to attend to board ordered IME exams. Although psychiatrists in the pending matter had previously examined her, petitioner now refused to submit to such examinations by the psychiatric IME based on "religious" grounds. She further contended that she did not abandon the orthopedic

IME exam because of her having left before it was completed was merely pursuant to mutual agreement between herself and the IME. On the contrary, Dr. Reed reported as follows: *"On 10/13/96, Brenda Hamilton came to the office, said that she was not sure if she should be there. Dr. Reed spoke to her and she told him again that she did not know why she was here. Dr. Reed offered her to use our phone and call the Industrial Medical Council and she refused and left."* [Emphasis added.]

On February 16, 1994, defendant filed a written motion seeking dismissal of petitioner's claims citing WCAB Rules 10562 and 10582. On or about March 11, 1994, petitioner filed written objection. On March 14, 1994, an Order Suspending [Proceedings] under Labor Code section 4053 and Order [Barring Benefits] under Labor Code section 4054 beginning October 6, 1993, due to petitioner's failure to attend the board ordered IME examinations, issued herein.

On August 1, 1994, an Order Denying Motion For Dismissal of Case and Notice of Intention to Submit, issued herein. On March 8, 1995, an Order Admitting Documentary Evidence, Order To File Copy of Defendant's Exhibit E, and Notice of Intention to Submit also issued. Thereafter, formal rating instructions and recommended ratings reflecting a 100:0% psychiatric rating issued on 10/2/95. On October 10, 1995, defendant timely filed a written motion to strike recommended rating. Thereafter, the matter came on the conference calendar on November

27, 1995, to address the motion to strike.

As set forth in the Minutes of Hearing of 11/27/95, petitioner objected to the proceedings, alleging she felt railroaded, and opposed defendant's motion to strike, and any further orders that she attend defense medical evaluations, including psychiatric medical. She threatened to abandon the proceedings (as fully set forth in the Minutes), but ultimately decided to remain noting her objections. For reasons fully set forth in said Minutes, and good cause appearing, defendant's motion to strike rating was granted, and the matter was taken off-calendar so that the medical records could be developed to allow parties to obtain current medical in orthopedics and psychiatry. Notice was given to petitioner that should she fail to attend the defense medical evaluations the matter would be dismissed unless she could show good cause to the contrary.

With the assistance of the Office of Information and Assistance, petitioner subsequently selected Dr. Richard I. Woods (orthopedics) and Dr. Joel Frank (psychiatry) from a panel of doctors to report on her behalf. Dr. Woods saw her on 4/3/96, and 4/24/96. Dr. Frank saw her on 7/29/96. After reviewing additional record, each medical evaluator issued a supplemental report. Defendant on 9/18/98 subsequently deposed [Dr. Woods.]

Dr. S. Sanford Kornblum, an orthopedist, on 2/6/96, evaluated petitioner on behalf of defendant.

Psychiatrically, she was scheduled to see Dr. Richard G.. Ness on 2/26/96. As fully set forth by Dr. Ness in his report of 2/27/96, although petitioner appeared for the psychiatric exam, she was highly uncooperative in the evaluation process, and refused to cooperate in the direct interview, completion of social history questionnaire, or the personality inventory (MMPI). In light of said failure to cooperate, and her not allowing the psychiatrist to complete the evaluation process, defendant filed a motion to dismiss petitioner's claims. Petitioner objected to defendant's motion.

The motion to dismiss thereafter came on the conference calendar on October 27, 1996. After hearing argument from the parties and reviewing the entire record, as set forth in the Minutes of 10/23/96, the request for terminating sanction of dismissal was denied, but in the alternative the undersigned indicated that a motion to draw adverse inference as to psychiatric issues would be entertained. In addition, parties were given leave to cross-examine their respective medical evaluators. On November 8, 1996, defendant filed its motion to dismiss or in the alternative to draw adverse inference from petitioner's failure to cooperate in defense medical exam. On 11/20/96, petitioner filed written objection thereto. On 1/22/98, an order granting motion to draw adverse inference as to psyche issues and to allow defendant opportunity to complete the cross-examination of Dr. Woods issued, and the matter was ordered off-calendar.

Ultimately, defendant elected not to complete the cross-examination of Dr. Woods. Parties appeared for conference before the undersigned on March 15, 1999, at which time (with the assistance of the I&A Officer) they attempted settlement. When those efforts again proved unsuccessful, the matter was continued to the trial calendar, and ultimately heard on June 28, 1999. It is from the subsequent Joint Findings and Order that petitioner take nothing by way of her claims that petitioner now seeks reconsideration.

DISCUSSION

Petitioner contends Dr. Kornblum inaccurately reports that she refused to give him a medical history. She claims to have understood he was to only perform a physical examination. She asserts she was not aware that she would be asked to give a work history "from 6/12/86 to present." She asserts her request to leave the medical exam for the purpose of retrieving her files at home to avoid giving incorrect information was denied, but she nevertheless agreed to proceed; however, her hesitation in providing detailed information was interpreted by the doctor as refusal to be cooperate. She contends the various medical reports reviewed by Dr. Kornblum contain inaccuracies. She asserts her orthopedic and psychiatric injuries are the result of stress, and repetitive trauma.

She contends her disability began on June 12, 1986. She alleges she suffered an injury while attending a meeting at the request of her supervisor in June of 1987. She alleges she was released to return to work with restrictions on 1/15/88, by her treating physician but the company would not approve them. On March 11, 1988, she was requested by the employer to see a company physician because of complaints about her by others. On March 14, 1988, her supervisor told her that she could not work until she saw the company physician, Dr. Seybold. She saw the doctor after being told by her union representative that she would be terminated for insubordination if she did not do so.

Dr. Seybold examined her and recommended a psychiatrist see her. Dr. Dwight A. Bergquist thereafter evaluated her. [Per applicant a copy of his report is attached; however the record reflects said report is not in evidence and hence it cannot be considered. There is no evidence presented that the medical report is newly discovered evidence that could not have previously been discovered with the exercise of due diligence]. She contends that because of severe pain she could hardly walk, and was terminated for failure to see a psychiatrist of her choice. Petitioner denies she ever threatened others, and asserts she was wrongfully terminated. [Petitioner's Labor Code section 132a claim remains pending and has not yet been adjudicated as it was bifurcated from the regular issues.]

Petitioner further contends the information contained in Dr. Richard Ness' report of 2/27/96, "is a farce!" She alleges she was given a test and asked questions that did not allow her to answer truthfully, or give explanation. Because she could not answer such questions, she contends it is unfair to label her as "uncooperative."

Petitioner contends it was error to exclude from evidence copies of "witness statements" of Barbara Marbley and Andrell Geiggar (Marked for Identification Only as Applicant's Exhibit 7). Following a hearing held on 9/21/92, petitioner obtained the witness statements that she contends are from Ms. Marbley and Mr. Geiggar that were subsequently excluded from evidence because they are unsigned, undated, and not under penalty of perjury. Petitioner contends she has now discovered the original statements of said witnesses that were unavailable at the last hearing held on June 28, 1999. Petitioner contends that because defendant's eight witness statements were not signed under penalty of perjury, and only given before a court reporter, they too should be excluded from evidence as inadmissible hearsay.

To the extent the decision made against her relies on the Job Analysis dated 6/26/98, petitioner further contends it is erroneous because the job analysis is one for an Administrative Clerk 3. She contends her job in 1986 was that of a U Grade Utility Records Control Clerk, and hence the job analysis

does not fully describe the duties she performed. She contends she was expected to work both Leakage and Permit desks which prompted her send a letter dated 6/9/86 to the department head requesting assistance with work load. Petitioner contends her injury occurred while performing duties of posting, filing, and retrieving large atlas sheets from tight files, often referred to as the "ice box/ice cream box." She contends those duties required awkward bending, pulling and twisting, among other things.

Petitioner further contends she fully cooperated to the best of her ability with all physicians, including the IMEs appointed by the board, and thus it was error to suspend and bar her benefits on October 6, 1993. She asserts the IMEs were highly prejudicial towards petitioner.

The undersigned has had an opportunity to again review the entire record, including documentary evidence, designated subpoenaed records, medical reports, and to consider the trial and deposition testimony given by petitioner. Still found not persuasive or convincing is the testimony of petitioner, and her self-serving contentions and assertions. Full weight is given to the medical opinion expressed by Dr. S. Sanford Kornblum dated 2/8/96, and by Dr. Richard Ness dated 2/27/96. It is well established that the relevant and considered opinion of one physician, though inconsistent with other medical opinions, may constitute substantial evidence. *Place v. W.C.A.B.* (1970) 3 Cal. 3d 372, 90 Cal. Rptr. 424,

(35 Cal. Comp. Cases 525); *Smith v. W.C.A.B.* (1969) 78 Cal. Rptr. 718 (34 Cal. Comp. Cases 424) In addition, the record further reflects there was good cause to grant the above-mentioned 1/22/98 order granting adverse inference as to psyche issues, including an adverse inference is drawn against petitioner as to issues of psychiatric injury AOE/COE, and extent of disability. After she had previously marshaled psychiatric evidence on her own behalf from Drs. Gluck, Tholen, and Bastedo, without having expressed "religious" objection to their examinations, she now refused, and/or thwarted, in a self-serving manner, the ability of defendant, and this board to develop the record concerning her allegations of psychiatric injury. It is defendant who has every reason to complain that its motion to dismiss was not granted given these circumstances.

There is no merit to petitioner's contentions. The findings of Dr. Ness and Dr. Kornblum are fully supported by the record, and are substantial evidence for the reasons explained by the defendant in its well-written answer to the petition for reconsideration. Based upon review of the entire record, including but not limited to the medical opinion of Dr. S. Sanford Kornblum dated 2/8/96, and Dr. Richard Ness dated 2/27/96, and the above-mentioned adverse inference drawn as to petitioner's claim of psychiatric injury and disability, it is found there is substantial evidence to support the finding that petitioner, while employed as a records clerk (group 40) at Compton, California by Southern California Gas Company, then permissibly

self-insured, did NOT sustain injury arising out of and in the course of employment to the psyche and orthopedic [spine and legs] on June 12, 1986 (LBO 167122), and during the period from 9/23/86 to 1987 (LBO 167123), and during the period from 1/27/88 to 3/14/88 (LBO 197762), and on June 14, 1987 (LBO 198956). There is no merit to the petition for reconsideration.

RECOMMENDATION

For the reasons stated above, it is respectfully recommended that the petition for reconsideration be DENIED.

"s/Ralph Zamudio
WORKERS' COMPENSATION JUDGE

DATED: 11-23-99
Filed and Served by mail on
above date on all interested parties
on the Official Address Record.
By: "s/Mary Garcia".

(Judge's orginal report duplicated last page from A-23 line 14 to all of A-24).

WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

BRENDA HAMILTON,	**Case No. LBO 167122**
Applicant,	**LBO 167123**
vs.	**LBO 197762**
SOUTHERN CALIFORNIA GAS CO	**LBO 198956**
Permissibly Self-Insured	**ORDER DENYING**
Defendant(s).	**RECONSIDERATION**

We have considered the allegations of the Petition for Reconsideration and the contents of the Report and Recommendation on Petition for Reconsideration ("report") of the workers' compensation administrative law judge (WCJ). Based on our review of the record, and for the reasons stated in said report, which we adopt and incorporate, we will deny reconsideration.

For the foregoing reasons,

IT IS ORDERED that said Petition for Reconsideration is **DENIED.**

WORKERS' COMPENSATION APPEALS BOARD

"s/"First and last name are illegible".
Name is not printed under signature.

I CONCUR,

"s/First and last name are illegible".
Name is not printed under signature.

NOT PARTICIPATING

DEPUTY

RICK DIETRICH

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA
DEC 03 1999
WORKERS' COMPENSATION APPEALS BOARD
SEAL Eureka
SERVICE BY MAIL ON SAID DATE TO ALL PARTIES AS SHOWN ON THE OFFICIAL ADDRESS RECORDED EXCEPT LIEN CLAIMANTS.
ed "s/First initial and last name are illegible".

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
JOESPH A. LANE, CLERK

DIVISION 5 January 18, 2000

Brenda Hamilton
4471 East Vail Street
Cerritos, CA 90703-7847

Hamilton v. W.C.A.B. et al.
B138303
Los Angeles County No. LBO167122

Dear Counsel:

You are hereby notified that a Petition for Writ of Review has been filed in the above-entitled and numbered case on January 18, 2000.

Pursuant to Rule 57(b), California Rules of Court, the Board and any Real Party in Interest should file their answers within twenty (20) days.

For further information, please contact this office.

Very truly yours,

Joseph A. Lane, Clerk

by:_____
Deputy Clerk

cc: All Counsel
File

Second Appellate District
300 South Spring St., Room 2217
Los Angeles, CA 90013
(213) 830-7000

STATE OF CALIFORNIA — GRAY DAVIS, *Governor*

DEPARTMENT OF
INDUSTRIAL RELATIONS
Workers' Compensation
Appeals Board
P.O. Box 429459
San Francisco, CA 94142-9459
Tel: (415) 703-4580

THE GREAT
SEAL OF THE
STATE OF
CALIFORNIA

January 28, 2000

Joseph A. Lane
Clerk, Court of Appeals
Second Appellate District
Division Five
300 South Spring Street, Rm. 2217
Los Angeles, CA 90013

RE: 2nd Civil No. B138303, Brenda Hamilton v. WCAB, et al. [WCAB Case Nos. LBO 167122, LBO 167123, LBO 197762, LBO 198956]

Dear Sir:

Respondent Workers' Compensation Appeals Board will not be filing an answer to the petition for writ of review recently filed in the above-referenced matter. In not filing an answer, no reflection is intended upon the merits of the petition or the decision rendered by the Board.

Very truly yours,

"s/Vincent Bausano".
Vincent Bausano
Assistant Secretary, WCAB
State Bar No. 130912

VB/vpd

cc: Brenda Hamilton
4471 East Vail Street
Cerritos, CA 90703-7847

Clopton, Penny & Brenner
Attn: Theodore Pennu, Esq.
1055 W. Seventh St., #3000
Los Angeles, CA 90017

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION FIVE

COURT OF APPEAL-SECOND DIST.
FILED FEB 28 2000
JOSEPH A. LANE Clerk
J. BELCHER
Deputy Clerk

BRENDA HAMILTON, B138303

Petitioner, (W.C.A.B. Nos. LBO 167122, 167123, 197762, 198956)

v.

WORKERS' COMPENSATION APPEALS BOARD, SOUTHERN CALIFORNIA GAS COMPANY, et al., ORDER

Respondents.

THE COURT:

The petition for writ of review file herein has been read and considered. The petition is denied.

TURNER, P.J. ARMSTRONG, J. GODOY PEREZ, J.

Attached Page

Brenda Hamilton
4471 East Vail Street
Cerritos, CA 90703-7847

Case Number B138303
Division 5
Brenda Hamilton
v.
W.C.A.B.

SUPREME COURT
FILED
MAY 5 - 2000

FREDERICK K. OHLRICH CLERK

DEPUTY

No. 2/5 B138303 - S086564

IN THE SUPREME COURT OF CALIFORNIA

Brenda Hamilton

v.

WORKERS' COMPENSATION APPEALS BOARD ET AL.

The time for granting or denying review in the above cause is hereby extended to and including June 7, 2000, or the date upon which review is either granted or denied.

"s/George".

Chief Justice

SUPREME COURT
FILED
MAY 24 2000

FREDERICK K. OHLRICH CLERK

DEPUTY

Second Appellate District, Division Five, No. B138303
S086564

IN THE SUPREME COURT OF CALIFORNIA
EN BANC

BRENDA HAMILTON, Petitioner

v.

WORKERS' COMPENSATION APPEALS BOARD Et Al., Respondents

Petition for review is DENIED.

Mosk

Acting Chief Justice